

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b)) **MM Docket No. 01-65**
Table of Allotments,) **RM-10078**
FM Broadcast Stations.) **RM-10188**
(Emmetsburg and Sibley, Iowa)) **RM-10189**

RECEIVED

AUG 8 2001

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Attention: **Mail Stop 1800D5**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

REPLY TO COMMENTS AND COUNTERPROPOSALS

1. Eisert Enterprises, Inc. ("Eisert"), licensee of KDWD(FM) [formerly KEMB(FM)], Channel 261A, Emmetsburg, Iowa, by its attorneys, hereby submits its reply to the Counterproposal of Saga Communications of Iowa, LLC ("Saga"), filed on April 23, 2001, Rule Making No. 10188, and its reply to the Comments and Counterproposal of Eisert filed on April 23, 2001, Rule Making Nos. 10078 and 10189.

2. In its Counterproposal, Saga asked the Commission to reject's Eisert's proposal to upgrade KDWD, a station that has been on the air for decades, and instead upgrade *vacant* channel 261 at Brandon, South Dakota from a Class A to a Class C3.¹

3. On May 8, 2001, Eisert filed a Reply to Counterproposal in which it demonstrated that Saga's Counterproposal is unacceptable because, *inter alia*, the rules preclude Saga from seeking an upgrade of a vacant allotment. Eisert also demonstrated that its proposal is superior to Saga's

¹ Both upgrades would require the deletion of vacant Channel 262A at Sibley, Iowa.

No. of Copies rec'd 014
List ABCDE

counterproposal because Eisert's proposal would provide new 60 dBu service to 2,384 more persons than would Saga's counterproposal. Under priority 4, this population difference is "determinative." *Benton and Dardanelle, Louisiana*, 3 FCC Rcd 4840, 4842 (citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)); *see, also, Galesburg, Illinois and Ottumwa, Iowa*, MM Docket No. 97-130, RM-8751, DA OO-2423, released October 27, 2000 (stating that under priority 4, the Commission will favor the proposal that would expand service to the greatest number of persons). Rather than reiterate the May 8th Reply to Counter Proposal here, Eisert hereby incorporates that reply here by reference.

4. In its Comments and Counterproposal filed April 23, 2001, Eisert asked that, in lieu of deleting Channel 262A at Sibley in order to accommodate Eisert's upgrade of KDWD at Emmetsburg, as Eisert initially requested, the Commission instead substitute Channel 264A for Channel 262A at Sibley and re-allot the channel to Sanborn, Iowa, as that community's first local service. Eisert demonstrated, *inter alia*, that Sanborn has no local FM service despite the fact that it clearly qualifies as a community for allotment purposes. Sibley, on the other hand, has two FM channels allotted to its community. Channel 282A at Sibley will be auctioned at the upcoming Auction No. 37. And Channel 262A at Sibley has laid fallow since it was allotted to the community 13 years ago. The substitution of Channel 262A with Channel 264A and the re-allotment of the channel from Sibley to Sanborn would further the Commission's FM allotment policy goal of providing a first local service to Sanborn. Eisert hereby incorporates its April 23rd Comments and Counterproposal here by reference.

5. Eisert hereby reiterates its pledges to promptly file an application to upgrade KDWD from a Class A to a Class C3 station to serve Emmetsburg and promptly apply for Channel 264A if it is allotted to Sanborn and promptly construct the station if its application is granted.

6. WHEREFORE, the premises considered, Eisert respectfully requests that the Commission dismiss Saga's Counterproposal, RM No. 10188, grant Eisert's proposal to upgrade KDWD from Channel 261A to Channel 261C3 at Emmetsburg, and allot Channel 264A to Sanborn as that community's first local service.

Respectfully submitted,
EISERT ENTERPRISES, INC.

By: Kevin M. Walsh
Kevin M. Walsh

Its Attorney

IRWIN, CAMPBELL & TANNENWALD, P.C.
1730 Rhode Island Avenue, NW, Suite 200
Washington, DC 20036
(202) 728-0400

August 8, 2001

kmw/50150p.002.RPLY2

DECLARATION OF JOHN EISERT

I, John Eisert, hereby declares as follows:

1. I am the President of Eisert Enterprises, Inc. ("Eisert"), licensee of KDWD(FM), Emmetsburg, Iowa.

2. I have reviewed the foregoing "Reply to Counterproposals" and the facts set forth therein are true and correct to the best of my information, knowledge, and belief.

I declare under the penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'John Eisert', written over a horizontal line.

**John Eisert
President
Eisert Enterprises, Inc.**

August 8, 2001

CERTIFICATE OF SERVICE

I, Donna Brown, do hereby certify that I have, this 8th day of August, 2001, caused to be sent by first class United States mail, postage prepaid, or by hand delivery, a copy of the forgoing "Reply to Comments and Counterproposals" to the following:

Ms. Kathleen Scheuerle*
Allocations Branch
Mass Media Bureau
Federal Communications Commission
445 12th Street, NW
Room 3-A247
Washington, DC 20554

Gary S. Smithwick, Esquire
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016



Donna Brown

*Denotes hand delivery